

VIA CERTIFIED MAIL

Doug Harris
General Manager
Veolia Environmental Services
#7 Mobile Avenue
Sauget, Illinois 62201

Re: Comprehensive Performance Test Date under the National Emissions Standards
for Hazardous Waste Combustors at 40 C.F.R. Part 63, Subpart EEE

Dear Mr. Harris:

I am responding to your letter dated July 23, 2012, in which Veolia Environmental Services (Veolia) essentially contends that the data it collected during expedited metals testing in August of 2008 is not “data in lieu of the initial performance test” as that term is used at 40 C.F.R. § 63.1207(d)(1). The matter is significant because, if the metals data is indeed “data in lieu” for purposes of 40 C.F.R. § 63.1207(d)(1), then Veolia’s next comprehensive compliance test (CPT) is due within 61 months of August 5, 2008.

You acknowledge that you used the term “data-in-lieu” to describe the results of the August 2008 metals testing in your letter to me dated June 14, 2012. Veolia ignores, however, other, earlier characterizations of the August 2008 testing results as “data in lieu.” For example, Section 1.3.2 of Veolia’s CPT Plans for Incinerators 2, 3, and 4, dated August 2009, states:

Veolia intends to use ‘data-in-lieu’ of conducting a separate performance test to demonstrate compliance with certain MACT emission standards.
This will include data from...recent testing for the MACT metals conducted in August and September 2008.

Emphasis added. Similarly, in Section 1.4.2 of the company’s own CPT Report, dated February 2010, Veolia stated that the August 2008 and September 2008 test data was being used as “data-in-lieu.”

It is simply disingenuous for Veolia to claim, as it does now, that the company “never intended to offer – and did not offer – the results of the expedited metals testing as ‘data in lieu . . .’”

Nothing Veolia presents in its July 23, 2012 letter regarding either the preamble to the Hazardous Waste Combustor MACT or Veolia's purported "agreement" with Cheryl Newton alters EPA's analysis regarding § 63.1207(d)(1)'s mandate. The portion of the preamble referred to by Veolia is silent with specific regard to whether data in lieu can or cannot be used for a portion of a CPT, as Veolia contends, but EPA believes this debate is simply irrelevant to the issue at hand. The preamble equates "data in lieu" with previous emissions data "collected as part of a test that was for the purpose of demonstrating compliance with RCRA or CAA requirements." The purpose of Veolia's 2008 metals testing was to show compliance with CAA requirements. Perhaps more importantly, the preamble explains why a source submitting data from previous emissions tests in lieu of performing a MACT performance test must schedule its subsequent MACT performance test within five years following the date the emissions test data was collected:

As we developed this allowance, we decided that it is necessary to limit the age of the data and specify the date of the following performance test because we need to be consistent with the MACT performance test requirements with respect to testing frequency. We can further justify the time and testing limitations of the data in lieu of allowance by acknowledging that we don't want some sources gaining an advantage over others by extending the date between performance tests.

64 Fed. Reg. 52,918.

Veolia suggests that EPA, through the then Air Enforcement Compliance Assurance Branch Chief, Cheryl Newton, somehow agreed that Veolia would not be required to conduct its next CPT until five years after its initial CPT in December 2009, regardless of the fact that Veolia had used data from its August 2008 metals testing in lieu of conducting a second metals analysis during the December 2009 CPT. I understand that you called Ms. Newton on July 30, 2012, and subsequently represented to Sarah Marshall of my staff that Ms. Newton agreed with Veolia's contention that the August 2008 metals testing results was not "data in lieu" for purposes 40 C.F.R. § 63.1207(d)(1). When queried about this conversation, Ms. Newton denied such a characterization of what she told you, and stated that she has no recollection of any discussion or agreement regarding the significance of the August 2008 test data for purposes of establishing the date on which any CPT would occur.

To sum up, Veolia used the data generated from the metals testing it conducted in August 2008 in lieu of conducting another round of metals testing during its initial CPT. As a result, 40 C.F.R. § 63.1207(d)(1) requires Veolia, as a source that submitted data in lieu of the initial performance test, to "commence the subsequent CPT within 61 months of commencing the test used to provide the data in lieu of the initial performance test."

My staff has checked with EPA Headquarters on the calculation of the 61 month period, and now believes that the 61st month will occur in September, 2013. Veolia must submit to EPA a notification of intent to conduct a CPT and a site-specific test plan for the CPT

at least one year before the performance test. 40 C.F.R. § 63.1207(e)(1)(i). Therefore, Veolia must submit to EPA its notification of intent and a site-specific test plan for the next CPT by September 5, 2012.

If you have any questions regarding this letter, please contact Ms. Sarah Marshall or Shannon Downey at (312) 886-6797 or (312) 353-2151, respectively.

Sincerely,

Eileen L. Furey
Acting Chief
Air Enforcement and Compliance Assurance Branch

cc: Ray Pilapil, Manager
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency

CERTIFICATE OF MAILING

I, Daneshia Hamilton certify that I sent a Request to Provide Information Pursuant to the Clean Air Act by Certified Mail, Return Receipt Requested, to:

Doug Harris
General Manager
Veolia Environmental Services
#7 Mobile Avenue
Sauget, Illinois 62201

I also certify that I sent a copy of the Request to Provide Information Pursuant to the

Clean Air Act by First Class Mail to:

Ray Pilapil, Manager
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue
Springfield, Illinois 62702

on the ____ day of _____ 2012.

Administrative Program Assistant
Planning and Administrative Section

Certified Mail Receipt Number: _____

standard bcc's: official file copy w/ attachment(s)
 Originating Organization Reading File w/attachments

other bcc's: Sabrina Argentieri, C-14J
 Sarah Marshall, AE-17J
 Shannon Downey, AE-17J

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